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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 RICHARD SAMAYOA,

14 Petitioner,

15 v.

16 RONALD DAVIS, Warden,

17 Respondent.

Case No.: 00cv2118-W (AJB)

**ORDER DENYING PETITIONER'S
MOTION TO ALTER, AMEND,
MODIFY, RECONSIDER, AND FOR
RELIEF FROM COURT'S ORDER
OF MAY 21, 2018 [DOC. 114]**

18
19 On June 18, 2018, Petitioner filed a “Motion to Alter, Amend, Modify, Reconsider,
20 and for Relief from Court’s Final Order of May 21, 2018.” (ECF No. 114.) In the May
21 21, 2018 Order, the Court denied Petitioner’s Motion to Appoint Additional Counsel. (See
22 ECF No. 112.) For the reasons discussed below, Petitioner’s motion [Doc. 114] is
23 **DENIED.**
24

25 **I. DISCUSSION**

26 “Under Rule 59(e), a motion for reconsideration should not be granted, absent highly
27 unusual circumstances, unless the district court is presented with newly discovered
28 evidence, committed clear error, or if there is an intervening change in the controlling law.”

1 389 Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999), citing School
2 Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Meanwhile, Rule 60(b)
3 of the Federal Rules of Civil Procedure provides for relief from a “final judgment, order,
4 or proceeding” where one or more of the following is shown: “(1) mistake, inadvertence,
5 surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable
6 diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
7 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
8 misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been
9 satisfied, released, or discharged; it is based on an earlier judgment that has been reversed
10 or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that
11 justifies relief.” See Fed.R.Civ.P. 60(b).

12 Petitioner states that this motion is brought pursuant to Federal Rules of Civil
13 Procedure 59(e) and 60(b). (Id. at 2.) Yet, after review, it is apparent the instant motion
14 does not articulate the standard for reconsideration under either rule, nor does Petitioner
15 offer substantive argument with respect to how either Rule 59(e) or 60(b) is satisfied in this
16 instance. Instead, Petitioner concedes that Harbison v. Bell, 556 U.S. 180 (2009), controls
17 in this matter, as the Court previously concluded, and that “[t]his Court correctly pointed
18 out that in the *Harbison* case the state of Tennessee did not provide for any funding for
19 post-conviction habeas [sic] type matters,” but nonetheless “urges that this factual
20 difference is [sic] should not be dispositive to this Court’s decision in this matter and this
21 Court should reconsider its Order of May 21, 2018.” (Id. at 5.)

22 Petitioner notes that the California Supreme Court policy “limits the hours allowed
23 to counsel for state clemency proceedings to 40-80 hours” and asserts that “[t]his is clearly
24 completely inadequate to conduct the clemency process and does not represent the
25 ‘meaningful access’ representation required by *Harbison*.” (Id. at 6.) He also states that
26 “counsel has already expended these hours just consulting with the appropriate agencies
27 such as the Office of the Public Defender, Habeas Corpus Resource Center, and the
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1 California Appellate Project, as well as attending many seminars and brainstorming groups
2 concerning the clemency process.” (Id. at 6-7.)

3 Upon review, the California Supreme Court Policies Regarding Cases Arising from
4 Judgments of Death and Payment Guidelines for Appointed Counsel includes a benchmark
5 stating: “Representation in executive clemency proceedings before the Governor of
6 California: 40-80 hrs.” (See Payment Guidelines for Appointed Counsel Representing
7 Indigent Criminal Appellants in the California Supreme Court, section II.I.3.iii, p. 18,
8 available at <http://www.courts.ca.gov/documents/PoliciesMar2012.pdf>, last visited June
9 29, 2018.) The policy also includes a statement immediately following that section
10 indicating that: “These benchmarks are guidelines for the expected hours in ‘typical’ cases,
11 and are neither ceilings nor floors for fees in any given case.” (See id. at p. 19.)

12 As discussed in the prior Order, the Supreme Court has held that “§ 3599 authorizes
13 federally appointed counsel to represent their clients in state clemency proceedings and
14 entitles them to compensation for that representation.” Harbison, 556 U.S. at 194. At the
15 same time, the Harbison Court noted that “subsection (a)(2) provides for counsel only when
16 a state petitioner is unable to obtain adequate representation.” Id. at 189. In this case, the
17 fact remains that the California Supreme Court appointed Mr. Niemy as counsel for
18 clemency and state postconviction proceedings. While Petitioner states that counsel has
19 expended the hours provided by the state court, the prior and instant motions are bereft of
20 any indication that the California Supreme Court has either declined or refused to
21 compensate counsel for clemency or state postconviction related activities. As previously
22 found, Petitioner does not appear to qualify for federal counsel under section 3599(a)(2).
23 (See ECF No. 112 at 5, citing Irick v. Bell, 636 F.3d 289, 291-92 (6th Cir. 2011).)
24 Accordingly, Petitioner fails to show that the Court’s prior order warrants relief under
25 either Rule 50(e) or 60(b).

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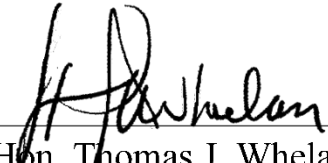
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1 **II. ORDER & CONCLUSION**

2 For the reasons outlined above, Petitioner's Motion to Alter, Amend, Modify,
3 Reconsider, and for Relief from Court's Final Order of May 21, 2018 [Doc. 114] is
4 **DENIED.**

5 **IT IS SO ORDERED.**

6 Dated: July 3, 2018

7 
8 Hon. Thomas J. Whelan
9 United States District Judge